

**Cr.A No.120/1994**

21.04.2008

Present: Mr. P.K. Sharma, Additional Advocate General, with Mr. P.M. Negi, Deputy Advocate General, for the appellant.

Mr. T.R. Chandel, counsel for the respondent-convict.

Respondent-convict, Kishan Chand, in person.

We have heard the respondent-convict on the question of quantum of sentence. He says that after the incident he got married and has two small children from the wedlock and that besides his wife and children he has old parents to maintain and look after, he being the sole bread winner. It is also stated by him that he was a young man of about 16 years at the time of the incident. Learned counsel representing him has argued that looking to his age, the respondent-convict be not visited the minimum prescribed sentence of ten years and that this fact serves as adequate and special reason for not imposing the minimum prescribed sentence of ten years imprisonment.

We have considered the plea taken by the respondent-convict and also the submission made by his counsel. The prosecutrix was just 5½ years old or say a small child and happened to be a niece of the respondent-convict. She was taken to a lonely place by the respondent-convict and there she was subjected to the act of rape. Respondent-convict was not so young that he could not understand the nature and the consequences of his act. Therefore, we are not convinced by the plea that the age of the respondent-convict is an adequate and special reason for invoking the proviso to sub-section (2) of Section 376 IPC. Consequently, we sentence the respondent-convict to undergo rigorous imprisonment of ten years and to pay a fine of

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Rs.5,000/-; in default of payment of fine to undergo rigorous imprisonment for a further period of six months. Jail warrants be prepared accordingly.

A copy of the judgment be given to the respondent-convict, free of cost.

( Surjit Singh ), J.

April 21, 2008<sub>(sd)</sub>

( Surinder Singh ), J.